

October 1, 2003

The Honorable Allan W. Klein
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

Re: Amendment of Environmental Quality Board Rules, parts 4410.7010 - 7070
OAH Docket No. 6-2901-15394-1
EQB Staff Reply Comments

Dear Judge Klein:

During the twenty day comment period that ended on September 24, 2003, you received comments from the following organizations and people:

- Minnesota Environmental Quality Board staff
- Minnesota Public Utilities Commission
- Minnesota Department of Commerce
- Sierra Club Air Toxics Campaign
- Minnesota Center for Environmental Advocacy, Izaak Walton League, and Minnesotans for an Energy Efficient Economy (joint comments)
- Communities United For Responsible Energy
- Tim Spitzack
- Jerry and Phyllis Faulkner
- Terrence Flower (Chair, Dakota County Citizens for Environmental Health)

Many of the issues raised in the written comments were ones the EQB staff was familiar with and addressed in its September 24 submission. Requests to provide more notice to affected landowners when they can be identified and to clarify the standard for including suggested alternatives in the scope of environmental review, for example, have been addressed by the staff with recommended changes in the proposed language. Other comments, such as requiring the EQB to respond in writing to comments on the environmental report and to specify what human impacts will be addressed in an environmental report, are ones for which the staff is not recommending any changes.

There are only a couple of matters from the written comments that the staff believes require a brief reply.

1. Comments of Spitzack, Faulkners, and Flower.

These commenters all live in Dakota County. Their comments for the most part are directed at a specific power plant proposal and not to the rules in general. There is nothing in this rulemaking proceeding that relates directly to any specific project. Questions such as whether Dakota County is an appropriate place for a new power plant, or whether natural gas should be burned to generate electricity, are not questions that can be addressed in this proceeding.

Several of the complaints raised by these commenters, such as the need for notice to the public and adequate environmental review, are addressed by these rules. While there is nothing in the proposed or existing 4410 rules that would require a project proposer to give notice to the public about a new power plant prior to the time a certificate of need is applied for, the new language will help to ensure that the public is made aware of a pending certificate of need application for a new large power plant. Also, the amendments establish requirements for comprehensive environmental review of proposed projects at the need stage.

2. Comments of Terrence Flower.

Dr. Flower has raised a couple of specific points about certain provisions in the rules. For instance, he suggests that formaldehyde be added to the list of pollutants in part 7035, subpart 2.A. that must be addressed in the environmental report. This list includes sulfur dioxide, nitrogen oxides, carbon dioxide, mercury, and particulate matter – the traditional pollutants of concern with power plant emissions. The Pollution Control Agency did not suggest the addition of formaldehyde or any other pollutant to this list, see Exhibit 29, and the EQB staff does not support adding it to the list. Moreover, it is not necessary to add it to the list because formaldehyde is a hazardous air pollutant under the Clean Air Act, 42 U.S.C. § 7412(b)(1), and hazardous air pollutants are covered under subpart 2.B. If it is appropriate to address formaldehyde emissions with respect to a particular proposal, this can be determined during the scoping process.

Dr. Flower also wants to require that health impacts within five miles of a proposed power plant be a mandatory consideration in part 7035, subpart 2.C. As the staff explained in its written comments, the proposed site for a power plant is not always known when a certificate of need is applied for. Potential health impacts on affected populations can be considered when environmental review is conducted at the EQB permitting stage, when a specific site is proposed, but it is not appropriate to require this kind of specificity at the certificate of need stage.

Dr. Flower does not want to see natural gas power plants reviewed any differently than coal fired power plants and other types. Under the proposed 4410 rules, the environmental review that is conducted does not depend on the type of fuel proposed. The list of alternatives to consider under part 4410.7035, subpart 1.B. is the same regardless of the fuel type. However, the Legislature has provided that natural gas-fired

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power plants can be reviewed under an alternative review process when the utility applies for a site permit from the EQB. Minn. Stat. § 116C.575. The procedures for alternative review are established under Minn. Rules chapter 4400 and are not part of this rulemaking effort.

Further, Dr. Flower raises concerns about the use of natural gas to generate electricity; he suggests that burning fossil fuels is not the way electricity should be generated in the future. These rule amendments only address the process for conducting environmental review when a certificate of need is applied for; these rules do not and cannot address issues related to how energy planning is conducted in Minnesota.

3. Comments of Citizens United for Responsible Energy.

Ms. Kristen Eide-Tollefson submitted comments on behalf of C.U.R.E. and requested that language be added to the rules to provide for the submission of written comments on the environmental report and the preparation by the EQB of written responses to the comments that are submitted. As the staff explained in its September 24 comments, there simply is not enough time to allow for the submission of written comments and written response. Instead, the PUC hearing will provide an opportunity to create a sufficient record on all important issues.

4. Comments of Department of Commerce and the Public Utilities Commission.

The Department of Commerce and the Public Utilities Commission, along with the Pollution Control Agency, have participated in the development of these rule amendments throughout the process. These agencies support adoption of the rules with the changes recommended by the EQB staff.

The EQB staff appreciates the participation of all the commenters. While not all suggestions that were made are supported by the EQB staff, the rules in the form recommended by the staff contain several modifications that will improve the rules as proposed.

Thank you very much for your consideration of our recommendations.

Sincerely,

Alan R. Mitchell

Manager, Energy Facility Permitting